

LEGAL AND PRACTICAL ASPECTS OF USING THE POLYGRAPH IN THE REPUBLIC OF LITHUANIA

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LEGAL ASPECTS

Up until 2000 Lithuania's regulations on the polygraph were contained exclusively in the laws governing defence. In 2000 Lithuania, passed a special law adopting the use of the polygraph. Yet, this special law applies more to government officials, that deal with classified information. It should be noted, however, that Lithuania is one of few countries that has laws regulating the use of polygraph. Another country known for such regulations is the United State (under the Employee Polygraph Protection Act, EPPA of 1988).

Several laws in Lithuania deal with the polygraph. These are:

1. Law on State Secrets of 1999;
2. Law on Using the Polygraph of 2000;
3. Regulations on Polygraph Examinations of 2002;
4. Law on Clandestine Activities of 2002;
5. Criminal Proceeding Code, which as enacted in 2003 does not directly forbid the use of polygraph. Yet, polygraph examinations might be admissible in the form of the specialist opinion or expert report.

The Law on Using the Polygraph ("The Law") regulates the use of polygraph, institutions with the right to use the polygraph, polygraph examiners, and polygraph examinees' rights and duties. Additionally, the Law describes the polygraph instrument concepts and who may be subjected to polygraph examinations.

The Law provides that the following government institutions are permitted to use the polygraph: the institution authorized by the Ministry of Interior, the Second Investigation Department under the Ministry of National Defense, the State Security Department, the institution authorized by the Ministry of Finance and the Service of Special Investigations. In all institutions, polygraph examinations are forbidden.

Polygraph examination can be performed in the following cases:

1. When granting permission to work with state secrets and when grounds exist to suspect that an individual has withheld or provided false biographical information.
2. Investigations of malfeasance, as well as internal or operational investigations.
3. Crimes or other misdemeanors, irregularities in working with classified information.

4. When grounds exist to suspect that a person who deals with classified information is under unlawful pressure.
5. At an examinee's request to repeat the polygraph examination.

According to the Law, polygraph examinees might be government employees, officials and soldiers, as well as persons applying for positions in the aforementioned governmental institutions.

The Law lays down certain restrictions on the use of the polygraph:

1. The polygraph examination cannot be administered and should be rescheduled if:
 - a) The subject is under the influence of or intoxicated by alcohol, narcotics, toxic or psychotropic substances or has used drugs that can influence the polygraph examination results;
 - b) The subject has mental difficulties or does not understand the essence of his actions and can control them (*compos mentis* (responsible));
 - c) The subject is on sick-leave;
 - d) It is determined that the subject's mental, psychological, physiological or physical state will influence the quality of the polygraph examination.

It is important to emphasise that a polygraph examination may only be administered upon the examinee's written consent.

2. The Law devotes particular attention to the polygraph examiner. In summary, the polygraph examiner should meet the following requirements:

- a) citizen of the Republic of Lithuania;
- b) university education and requisite license to administer the polygraph examinations;
- c) permission to handle information classified "top secret".

3. The polygraph examiner's duties and responsibilities are to:

- a) be impartial in performance of duties;
- b) respect the rights, freedoms and dignity of the examinees;
- c) comply with ethical standards;
- d) comply with accepted procedure for administering polygraph;
- e) use observation, audio, and/or video recording techniques;
- f) protect classified information;
- g) draw a conclusion on examinee's truthfulness based solely on the data obtained during the polygraph examination;
- h) inform examinee about how the polygraph examination will be conducted.

4. The polygraph examiner has the rights to:

- a) obtain all necessary information about the examinee in advance;
- b) refuse to administer the polygraph examination if sufficient grounds exist to surmise that the polygraph examiner will be unable to deliver an impartial opinion or in other circumstances, defined by the Law;

3) cancel the polygraph examination if the examinee's psychiatric, psychological or physical state would interfere with the quality of the polygraph examination.

5. The examinee's rights:

- a) cancel or to pause the polygraph examination or any stage of the examination;
- b) be informed about the use observation, audio and/or video recording techniques;
- c) be shown and have explained the polygraph examination procedure and the equipment used;
- d) learn the final decision of the polygraph examination.

The Law provides for consequences of polygraph examination and the polygraph examination opinion is used as additional information characterizing the examinee and his/her environment. If the polygraph examination decision is positive (Deceptive Indicated), and in cases in which the examination, depending on all information about the examinee and his/her environment the permission to deal with classified information may be not issued or revoked.

The Regulations on Polygraph Examination of 2002 describe in detail the administration of the polygraph examination, list polygraph examination phases and compulsory polygraph instrumentation (two Pneumographs, Galvanic Skin Response (GSR), pulse and blood pressure Cardio). It is also permitted to use additional components. The polygraph examination by law must be observed and recorded using audio and/or video recording techniques. Another provision holes that given polygraph examiner should administer no more than two polygraph examinations in one day.

The Regulations on Polygraph Examination describe in detail the polygraph examination phases and mandatory actions in the each phase, as follows:

1. **Preparation for the polygraph examination.** In this phase, the polygraph examiner has the right to obtain all necessary information about the examinee and to allot time to develop questions.
2. **Pre-test interview.** The polygraph examiner should obtain written consent from the examinee, discuss the test questions with the examinee, and explains how the answers should be given. The polygraph examiner should ensure that the examinee clearly understands the test questions. The polygraph examiner should evaluate the examinee's suitability for testing (and, if necessary, to call a medical doctor);
3. **Testing phase.** All test questions should be asked clearly using the same intonation. The polygraph examiner must obtain sufficient number of the polygraph charts and reading, as dictated by the given questioning technique;
4. **Post-test interview.** During the polygraph examination phase, the polygraph examiner discusses the preliminary information obtained from the polygraph charts. Every examinee is given the opportunity to explain his physiological responses to the test questions;
5. **Chart evaluation.** During this phase, the examiner analyses all of the data obtained during the polygraph examination. The polygraph examiner's remarks regarding the examinee should be clear and precise;
6. **Presentation.** The examiner prepares and present the conclusions drawn from of the polygraph examination.

The conclusion should be based solely on the data obtained during the polygraph examination. The final conclusions of the polygraph examinations might be:

- Positive- when the polygraph examination data indicates that the examinee was deceptive in answering relevant questions (Deception Indicated, DI).
- Negative- when the polygraph examination data indicates that the examinee was truthful in answering relevant questions No (Deception Indicated, NDI).
- No conclusion can be provided when the examinee's truthfulness or deception cannot be determined from the data of the polygraph examination (Inconclusive, INC).

In all cases, the polygraph cannot draw up a final conclusion until after having duly and properly analyzed all data obtained from the polygraph examination in accordance with internal regulations.

PRACTICE AND HISTORY

The use of polygraph in Lithuania began in 1992, when the Government Security Department at the Ministry of Interior of the Republic of Lithuania (further – GSD) purchased an instrument, trained its officers, and commenced polygraph examinations. In general, polygraph examinations were administered at the requests of prosecutors, in the GSD pre-employment screening and internal investigations.

Most of the polygraph examination results have helped the investigators pursue proper leads in finding perpetrators, thus saving money and valuable time, and enabling charges dropped from the innocent subjects. On some occasions insufficient information prevented a polygraph examination from being conducted and in about 10 cases subjects refused to be tested. In 2005 and 2006, results were admitted as evidence in courts, using Guilty Knowledge Test (GKT). Unfortunately, to order to obtain more detailed information, the permission of the courts or prosecutors is required.

The Second Investigation Department (SID) has used the polygraph since 1999 and has already performed more than 800 examinations. The examinations were mostly administered on persons whose service was related to the usage, protection, or review of classified information. Polygraph examinations also work as a preventive and disciplinary measure and as a personnel confidence-building measure. This is because it serves to deter national defense system personnel from engaging in illegal activity or illegal relations, since employees are aware that they will have to undergo periodic polygraph examinations and will thus avoid illegal actions or refuse to take certain positions.

One specialized police agency began using the polygraph in 2003. These mostly involved pre-employment and internal investigation polygraph examinations and totaled about ten in four years. Police departments list the main problem with the polygraph as the lack of knowledge about the polygraph, of periodic training, and of co-operation between agencies that use the polygraph.

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